IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 397 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT – Applicant
Versus
P D AGRWAL & 1 - Respondents

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Appearance :
MR. I.M. PANDYA, LD. APP for Applicant:
MR M.R. VYAS for MR. BP MUNSHI for Respondent : 1,
MS NIRALI B MUNSHI for Respondent : 1,
NOTICE UNSERVED for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 26/07/2006

ORAL JUDGMENT

1. The State of Gujarat has preferred this Revision Application under Section 397 read with Section

401 of Criminal Procedure, Code 1973 against the order dated 25/2/1999 passed by learned Addl. Sessions Judge, Bhavnagar below exhibit-8 in Criminal (Essential Commodities) Case No. 7/1987 dropping the proceedings against the opponents initiated under the provisions of Fertilizer (Control Order) 1957 and the Essential Commodities Act.

2. The opponents were charged under Section 3 & 7 of the Essential Commodities Act and the complaint was lodged by the Agricultural Inspector alleging breach of provisions of Fertilizer (Control Order)1957 and the breach of complaint was under Article 19. Application exhibit-8 came to be made in Criminal Case No. 7 of 1987 praying for dropping of the proceedings and discharge of the opponents mainly on the ground that under provision of section 12 AA (i) (e) of the Essential Commodities Act the complainant needs to be specially authorised for lodging prosecution. The contention was made that the complainant in the instant case was not specially authorised as envisaged under Section 12-AA (i) (e) and, therefore, the complaint being not competent, the same is not maintainable, and therefore, the opponents can not be subjected to undergo rigmarole of facing the trial. The trial court has accepted the application and recorded discharge of dropping the proceedings under the impugned order dated

25/2/1999. Being aggrieved and dissatisfied with the said order the State has preferred the present revision application.

3. It is required to be noted that this revision application can be disposed of only on the ground that the order impugned does not suffer from any infirmity so far as the findings of the trial court in respect of the second contention of competence of complainant is concerned. The trial court has recorded in para-5 of its order that, despite given ample opportunity to produce the special authority for lodging the prosecution against the opponents, the complainant failed in providing any such authorisation, and therefore, the court has come to the conclusion that the special authorisation as envisaged under Section 12-AA (i)(e) of Essential Commodities Act was conspicuously absent. In view of this, the order of dropping of proceedings was made. The reliance was placed on the decision of Patna High Court in case of SURESH SINGH V. THE STATE OF BIHAR & ANR., reported in 1991 Cr.L.J. pg. 720 in support of his conclusion. This Court also in case of STATE OF GUJARAT V. DHARAMSHI MORARJI CHEMICALS CO. LTD, in Criminal Revision application No. 395 of 1999 decided on 30/6/2006 has held that Section 12-AA (i) (e) envisages a special permission and in absence thereof, the prosecution would fail. In view of this, no other contention needed to

be gone into. Suffice it to say that the order impugned does not suffer from any interference so as to call for any interference by this Court. Hence the revision fails and it is required to be rejected and accordingly it is rejected. Rule discharged.

[S.R. BRAHMBHATT, J]

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